

AMENDED IN ASSEMBLY MARCH 18, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1255

Introduced by Assembly Member Pan

February 22, 2013

An act to amend Section ~~25502.5~~ *12313* of the Corporations Code, relating to corporations.

LEGISLATIVE COUNSEL’S DIGEST

AB 1255, as amended, Pan. ~~Corporations~~. *Corporations: consumer cooperatives.*

Existing law, the Consumer Cooperative Corporation Law, governs the organization and operation of consumer cooperative corporations. The law specifies the provisions that may be set forth in the articles of incorporation of a consumer cooperative.

This bill would include among these provisions the classes of preferred, nonvoting shares, if any, and whether the directors of the consumer cooperative corporation may set the number, series, and rights, preferences, privileges, restrictions, and conditions attaching to each class.

~~The Corporate Securities Law of 1968 provides for the regulation of the issuance of corporate securities and includes a civil remedy for specified issuers of securities for a specified violation of its provisions.~~

~~This bill would make technical, nonsubstantive changes to this provision.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 12313 of the Corporations Code is*
2 *amended to read:*

3 12313. (a) The articles of incorporation may set forth any or
4 all of the following provisions, which shall not be effective unless
5 expressly provided in the articles:

6 (1) A provision limiting the duration of the corporation's
7 existence to a specified date.

8 (2) A provision providing for the distribution of the remaining
9 assets of the corporation, after payment or adequate provision for
10 all of its debts and liabilities, to a charitable trust.

11 (b) Nothing contained in subdivision (a) shall affect the
12 enforceability, as between the parties thereto, of any lawful
13 agreement not otherwise contrary to public policy.

14 (c) The articles of incorporation may set forth any or all of the
15 following provisions:

16 (1) The names and addresses of the persons appointed to act as
17 initial directors.

18 (2) Provisions concerning the transfer of memberships, in
19 accordance with Section 12410.

20 (3) The classes of members, if any, and if there are two or more
21 classes, the rights, privileges, preferences, restrictions and
22 conditions attaching to each class.

23 (4) Any other provision, not in conflict with law, for the
24 management of the activities and for the conduct of the affairs of
25 the corporation, including any provision which is required or
26 permitted by this part to be stated in the bylaws.

27 (5) A provision conferring upon members the right to determine
28 the consideration for which memberships shall be issued.

29 (6) *The classes of preferred, nonvoting shares, if any, and*
30 *whether the directors may set the number, the series, and the rights,*
31 *preferences, privileges, restrictions, and conditions attaching to*
32 *each class.*

33 ~~SECTION 1. Section 25502.5 of the Corporations Code is~~
34 ~~amended to read:~~

35 ~~25502.5. (a) A person, other than the issuer, who violates~~
36 ~~Section 25402 shall be liable to the issuer of the security purchased~~
37 ~~or sold in violation of Section 25402 for damages in an amount~~
38 ~~up to three times the difference between the price at which the~~

1 security was purchased or sold and the market value which the
2 security would have had at the time of the purchase or sale if the
3 information known to the defendant had been publicly disseminated
4 prior to that time and a reasonable time had elapsed for the market
5 to absorb the information and shall be liable to the issuer of the
6 security or to a person who institutes an action under this section
7 in the right of the issuer of the security for reasonable costs and
8 attorney's fees.

9 (b) The amounts recoverable under this section by the issuer
10 shall be reduced by any amount paid by the defendant in a
11 proceeding brought by the Securities and Exchange Commission
12 with respect to the same transaction or transactions under the
13 federal Insider Trading Sanctions Act of 1984 (15 U.S.C. Secs.
14 78a, 78c, 78o, 78t, 78u, and 78ff) or any other act, regardless of
15 whether the amount was paid pursuant to a judgment or settlement
16 or paid before or after the filing of an action by the plaintiff against
17 the defendant. If a proceeding has been commenced by the
18 Securities and Exchange Commission, but has not been finally
19 resolved, the court shall delay entering a judgment for the plaintiff
20 under this section until that proceeding is resolved.

21 (c) If any shareholder of an issuer alleges to the board that there
22 has been a violation of this section, the board shall consider the
23 allegation in good faith, and if the allegation involves misconduct
24 by any director, that director shall not be entitled to vote on any
25 matter involving the allegation. However, that director may be
26 counted in determining the presence of a quorum at a meeting of
27 the board or a committee of the board.

28 (d) This section shall only apply to issuers who have total assets
29 in excess of one million dollars (\$1,000,000) and have a class of
30 equity security held of record by 500 or more persons.